No. 18-302

In the
Supreme Court of the United States

ANDREI IANCU, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE

Petitioner,

v.

ERIK BRUNETTI,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), provides that the government shall not refuse a trademark registration on account of the mark's nature unless the mark comprises "immoral . . . or scandalous matter." The question presented is whether the scandalous-marks provision of the Lanham Act is facially invalid under the First Amendment.

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INTEREST OF AMICUS CURIAE[1]

Pacific Legal Foundation (PLF) is a public interest legal foundation established in 1973 to litigate cases that advance the principles of limited government and individual liberty. Toward those ends, PLF has participated as amicus curiae in many cases involving the speech rights of entrepreneurs and businesses. PLF attorneys have also published extensively on the need for full First Amendment protection for commercial speech. This case is important to PLF because it threatens the freedom of speech of individual entrepreneurs and commercial enterprises.

INTRODUCTION AND SUMMARY OF ARGUMENT

Erik Brunetti is a designer and artist, and since 1990 has owned the clothing brand "FUCT." *In re Brunetti*, 877 F.3d 1330, 1337 (Fed. Cir. 2017). Mr. Brunetti's brand was founded as, and remains, a provocative streetwear brand known for its anti-establishment celebration of freedom of expression. Samuel Hine, *How O.G. Streetwear Brand FUCT Took a Free Speech Case All the Way to the Supreme Court*, GQ Magazine (Jan. 30, 2019).[2] While it is a homonym for a common curse word," "FUCT" has also come to be an acronym for "Friends yoU Can't Trust." *See id.*; *In re Brunetti*, 877 F.3d at 1339.

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than amicus curiae funded its preparation or submission. Counsel for both parties granted consent to the filing of this amicus curiae brief.

[2] *Available at* https://www.gq.com/story/fuct-erik-brunetti-supreme-court-case.

In 2011, two individuals filed an application to register "FUCT" as a trademark. *In re Brunetti*, 877 F.3d at 1337. Mr. Brunetti later took over the application. *Id.* However, registration of the brand was refused by the Patent and Trademark Office examiner on the grounds that it was the past tense for a vulgar word, and therefore "scandalous" under the Lanham Act. *Id.* Mr. Brunetti appealed that determination. *Id.*

On appeal to the Federal Circuit, and following this Court's decision in *Matal v. Tam*, 137 S. Ct. 1744 (2017), the court reversed. The Federal Circuit held that the scandalous-marks provision violates the First Amendment because it is an impermissible content-based speech restriction. *Id.* at 1341. This Court granted review. *Iancu v. Brunetti*, ___ S. Ct. ___ (2019); 2019 WL 98541.

Petitioner (government) asserts that it is not a restriction of speech to deny applications to register "scandalous" marks. Pet. Br. at 40–41. But the Court recently rejected a similar argument by the government in *Tam* that rejecting "disparaging" marks is not a speech restriction. *Tam*, 137 S. Ct. at 1757–63. In an effort to avoid that outcome here, the government argues that *Tam* does not apply in this case because it concerned a provision under the Lanham Act that discriminated on viewpoint and, according to the government, even if the scandalous-marks provision restricts speech here, it does so in viewpoint-neutral fashion. Pet. Br. at 15–19. As a result, the government urges the Court to apply less than strict scrutiny. Pet. Br. at 19–40.

But the scandalous-marks provision is viewpoint-based because it requires the government to evaluate proposals based on whether "the ideas are themselves offensive to some of their hearers." Indeed, Mr. Brunetti's mark was rejected because the government determined that its message was "anti-social" and "misogyny[istic]," and "lacking in taste"—a clear value judgment based on viewpoint. And even if the provision is viewpoint-neutral, it is necessarily content-based, and this Court's recent decision in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), made clear that content-based restrictions are uniformly subject to strict scrutiny.

Nor is Mr. Brunetti's mark commercial speech. Because the "commercial speech doctrine" only applies when the government regulates to protect the public from commercial harms or fraud, the doctrine is inapplicable here. This is not a case where the public is at risk from misleading advertising, nor is it a case where use of a trademark may potentially defraud the public. In fact, to the extent that "FUCT" is commercial speech, the government can best protect the public by granting the mark trademark protection.

If the Court does hold Mr. Brunetti's mark to be commercial speech, an express overruling of *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557 (1980), and the intermediate scrutiny for commercial speech it sets forth, is long overdue. There is no principled distinction between commercial and noncommercial speech in the First Amendment, and the Court should clarify that the Constitution fully protects commercial speech.

ARGUMENT

I

STRICT SCRUTINY MUST APPLY BECAUSE THE SCANDALOUS-MARKS PROVISION IS A VIEWPOINT- AND CONTENT-BASED SPEECH RESTRICTION

The First Amendment prohibits "governmental control over the content of messages expressed by private individuals." *Turner Broadcasting Sys. v. Fed. Comm. Comm'n*, 512 U.S. 622, 641 (1994). This Court applies "the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content." *Id.* at 642. Likewise, when the government targets "particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). Thus, "[v]iewpoint discrimination is [ ] an egregious form of content discrimination." *Id.* Indeed, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). The scandalous-marks provision upsets this bedrock principle. It is unconstitutional precisely because it asks the government to deny registration based on whether "society finds [an] idea itself offensive or disagreeable."

In *Tam*, the Court emphasized that its cases "use the term 'viewpoint' discrimination in a broad sense" and that "[g]iving offense is a viewpoint."

137 S. Ct. at 1763. Specifically, "'the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.'" *Id.* (quoting *Street v. New York*, 394 U.S. 574, 592 (1969)). Accordingly, the Court held that the requirement that a mark not be "offensive to a substantial percentage of the members of any group" was viewpoint-based and subject to strict scrutiny. *Id.* Justice Kennedy further emphasized that "[t]he Government may not insulate a law from charges of viewpoint discrimination by tying censorship to the reaction of the speaker's audience." *Id.* at 1766 (Kennedy J., concurring).

The scandalous-marks provision is substantially similar to the disparagement provision that was held unconstitutional in *Tam*. In determining whether a mark is "scandalous," the government must consider whether a "substantial composite of the general public" would find it to be "shocking to the sense of truth, decency, or propriety; disgraceful; offensive; disreputable; . . . giving offense to the conscience or moral feelings; . . . or calling out for condemnation." *In re Brunetti*, 877 F.3d at 1336. Thus, marks are approved only if they express a viewpoint that is not "offensive" or "disreputable" to a "substantial composite of the general public." *Id.* The government's determination that a mark is offensive essentially gives the most sensitive ears a speech veto—in clear contravention of the Constitution's demand of viewpoint neutrality.

In determining that "FUCT" was a scandalous mark, the government went far beyond merely appealing to dictionary definitions of the term "fuct." *In re Brunetti*, 877 F.3d at 1337. Instead, the

government conducted a Google Images search and looked at the specific ways that "FUCT" had been utilized. *Id.* It found that the mark had been used in a fashion "that objectifies women and offers degrading examples of extreme misogyny." *Id.* Similarly, the government concluded that the usage of "FUCT" included elements "of extreme nihilism—displaying an unending succession of anti-social imagery of executions, despair, violent and bloody scenes including dismemberment, hellacious or apocalyptic events, and dozens of examples of other imagery lacking in taste." *Id.* Further, the government found that advertising the "FUCT" brand carried with it "negative sexual connotations" because it promoted group sex. *Id.* at 1338.

The government's analysis is therefore a textbook example of viewpoint discrimination. If the brand promoted a campaign focused on female empowerment and sexual autonomy rather than what the government concluded was an example of "misogyny," then the government would have reached a different conclusion. Indeed, rejecting "FUCT" because it carries "negative sexual connotations" is itself a value judgment against lawful sexual activity. Similarly, if the brand had utilized positive images of rainbows, puppies, and unicorns rather than "anti-social imagery" that the government determined was "lacking in taste," then the mark could have been approved. But the government discriminated precisely because of the viewpoint that "FUCT" expressed in its marketing. There are no objective non-viewpoint-based ways to measure whether an image is "misog[ynistic]," "anti-social," or "lacking in taste," as such characterizations depend solely on the personal subjective judgments of government

employees. As in *Tam*, the government rejected Mr. Brunetti's mark because it is "an expressive message—namely, a message that is scandalous or offensive to a substantial composite of the general population." *In re Brunetti*, 877 F.3d at 1349.

Even if the scandalous-marks provision is viewpoint-neutral, it is plainly content-based and subject to strict scrutiny. In *Reed* this Court clarified long-lingering confusion as to when exactly a law was considered content-based and subject to strict scrutiny. 135 S. Ct. at 2228. The Court emphasized that any law that "target[s] speech based on its communicative content" is "presumptively unconstitutional and may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests." *Id.* at 2226. Any law that "applies to particular speech because of the topic discussed or the idea or message expressed," is content-based, regardless of whether the law was enacted with benign intentions or can be justified by some other non-speech-suppressing purpose. *Id.* at 2227. Content-based restrictions are constitutionally suspect because such restrictions lend themselves to use "for invidious, thought-control purposes." *Id.* at 2229.

The scandalous-marks provision is content-based on its face because it requires the government to examine the "communicative content" of a mark and to approve or deny the mark based on "the topic discussed or the idea or message expressed." *Id.* at 2227. A policy that requires government to determine which types of messages are permissible is constitutionally suspect because it opens the door to censorship for "invidious, thought-control purposes."

Id. at 2229. Accordingly, under *Reed*, strict scrutiny applies even if the scandalous-marks provision is viewpoint-neutral.

II

THE COMMERCIAL SPEECH DOCTRINE DOES NOT APPLY TO THIS CASE

For the reasons discussed above, the scandalous-marks provision is a viewpoint- and content-based speech restriction. Nonetheless, left open by *Tam* is whether the *Central Hudson* test for commercial speech is applicable to challenges to trademark regulation under the Lanham Act. 137 S. Ct. at 1764 n.17 (Alito, J.). It is not.

In 1976, this Court reinstated the protections of the First Amendment for commercial speech. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 761–62 (1976). The Court later created a four-part test for evaluating commercial speech regulations in *Central Hudson*, 447 U.S. at 564, and modified the test in *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 504 (1996).

A. Trademarks Are Fully Protected Because They Combine Expressive Speech with Commercial Components

Commercial speech is speech that "does no more than propose a commercial transaction." *44 Liquormart*, 517 U.S. at 518 (Thomas, J., concurring) (quoting *Va. State Bd. of Pharmacy*, 425 U.S. at 762); *see also* Martin H. Redish, *Commercial Speech, First Amendment Intuitionism and the Twilight Zone of*

Viewpoint Discrimination, 41 Loy. L.A. L. Rev. 67, 74–75 (2007) (the definition of commercial speech for the Court is "speech advocating the sale of commercial products or services"). Trademarks on the other hand—and Mr. Brunetti's mark in particular—do not propose a commercial transaction. On the contrary, trademarks serve many functions, and Mr. Brunetti is using "FUCT" to express a message. *See* J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 3:2 (4th ed. Westlaw); *see also In re Tam*, 808 F.3d 1321, 1328 (Fed. Cir. 2015) ("With his band name, Mr. Tam conveys more about our society than many volumes of undisputedly protected speech."); *In re Brunetti*, 877 F.3d at 1349 (noting examples of "uncouth" applied-for trademarks such as "FUCK CANCER" and "FUCK RACISM"). While that message may be crude and discomfiting to some, the First Amendment is designed to protect expressive speech. *See Cohen v. California*, 403 U.S. 15, 25–26 (1971) (invalidating the prosecution of an individual for wearing a jacket that said "Fuck the Draft," and declaring that it is "often true that one man's vulgarity is another's lyric").

When expressive speech is "inextricably intertwined" with commercial components—like the "FUCT" trademark—the Court "cannot parcel out the speech, applying one test to one phrase and another test to another phrase." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 796 (1988). Here, the government acknowledges that Mr. Brunetti's mark is expressive. Pet. Br. at 7. Therefore, because of its function and purpose, "FUCT" cannot be categorized solely as commercial speech under even the broadest definition. *Cf. Rubin v. Coors Brewing Co.*, 514 U.S. 476, 492 (1995) (Stevens, J., concurring) ("[T]he Government

should not be able to suppress . . . truthful speech merely because it happens to appear on the label of a product for sale.").

B. The Court's Rationales for Less Than Full Protection Do Not Apply to Trademarks

The rationales for affording commercial speech less protection does not apply to Mr. Brunetti's attempt to register "FUCT." Government may restrict commercial speech to protect the public from "commercial harms," *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 579 (2011) (citing *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 426 (1993)), or lessen the risk of fraud. *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388–89 (1992) (citing *Va. State Bd. of Pharmacy*, 425 U.S. at 771–72). Because neither concern is implicated here, the Court should not treat Mr. Brunetti's mark as commercial speech.

The Court's concern for protecting the public from "commercial harm[s]" focuses on the financial loss suffered as a result of untruthful or misleading advertising. *See Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 81–82 (1983) (Stevens, J., concurring). But trademarks—and registration with the government—help remedy this problem on their own. Trademarks protect the public from being confused or misled by competing merchants. *See* Pet. Br. 2 (citing, *e.g.*, *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 1299 (2015)). Indeed, to the extent there is concern about misleading or untruthful speech in this case, granting Mr. Brunetti

registration of his trademark would protect the public from confusion.[3]

Likewise, the risk of fraud is not present with Mr. Brunetti's use of his mark. Nowhere does the government contend that the rejection of "FUCT" is necessary to combat fraud. Even if it had, fraud is best mitigated by granting Mr. Brunetti trademark registration for his mark. In any event, "the First Amendment does not shield fraud." *Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003). Government can use anti-fraud laws to prosecute, and thereby deter, speech that defrauds the public without running afoul of the First Amendment. *See id.* at 621.

Furthermore, this Court's recent decisions also counsel against expanding the commercial speech doctrine to trademark registration. Instead, the Court has narrowed the applicability of the commercial speech doctrine. *See Reed*, 135 S. Ct. at 2235 (Breyer, J., concurring) ("[T]he Court has applied the heightened 'strict scrutiny' standard even in cases where the less stringent 'commercial speech' standard was appropriate.").

Rather than classify Mr. Brunetti's mark as commercial speech worthy of only limited constitutional protection, the Court should hold that it is fully protected expressive speech.

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[3] Trademark registration provides fashion designers like Mr. Brunetti with valuable tools to combat the $450 billion global problem of counterfeit clothing *See* https://www.businessoffashion.com/articles/intelligence/fighting-the-450-billion-trade-in-fake-fashion.

III

CENTRAL HUDSON SHOULD BE OVERRULED AND THE COMMERCIAL SPEECH DOCTRINE REPUDIATED

Even if the Court were to find Mr. Brunetti's mark to be commercial speech, the intermediate scrutiny described in *Central Hudson*, 447 U.S. at 564, should be repudiated.

A. *Central Hudson* Is Unworkable and Lacks Constitutional Principles

Since *Central Hudson* was decided in 1980, confusion and inconsistency have been the only guarantees in cases analyzing commercial speech regulations. *See 44 Liquormart*, 517 U.S. at 526–28 (Thomas, J. concurring); Daniel Halberstam, *Commercial Speech, Professional Speech, and the Constitutional Status of Social Institutions*, 147 U. Pa. L. Rev. 771, 779–89 (1999) (discussing the inconsistent approach taken by courts and the calling into doubt of *Central Hudson* and the commercial speech doctrine); Deborah J. La Fetra, *Kick It Up a Notch: First Amendment Protection for Commercial Speech*, 54 Case W. Res. L. Rev. 1205, 1216–17 (2004) (noting that courts have acknowledged that the commercial speech doctrine is difficult to apply predictably). In all likelihood, confusion has resulted because there is no "philosophical or historical basis for asserting that 'commercial speech' is of 'lower value' than 'noncommercial' speech." *44 Liquormart*, 517 U.S. at 522 (Thomas, J., concurring) (citing authorities); *Tam*, 137 S. Ct. at 1769 (Thomas, J., concurring); *see also generally* Alex Kozinski & Stuart Banner, *Who's Afraid of Commercial Speech?*, 76 Va.

L. Rev. 627 (1990) (concluding that there is no valid reason for distinguishing between commercial and noncommercial speech); La Fetra, *supra* at 1221 ("[E]xcluding corporate speech from the First Amendment's reach would almost inevitably have a detrimental impact on the most fundamental values underlying the protection of free speech.").

It is increasingly true that distinguishing between commercial and noncommercial speech is hopeless. *Kasky v. Nike, Inc.*, 45 P.3d 243, 269 (Cal. 2002) *dismissed as improvidently granted*, 539 U.S. 654 (U.S. June 26, 2003) (Brown, J., dissenting) ("[T]he commercial speech doctrine, in its current form, fails to account for the realities of the modern world—a world in which personal, political, and commercial arenas no longer have sharply defined boundaries."). The line between commercial speech and fully protected speech has long been blurred, but advances in technology and social connectedness further cloud the distinction. *See* La Fetra, *supra* 1231–36. Examples ranging from music videos, to press releases, to television show product placement, to letters to the editor, to "guerilla" marketing and virtual advertising show that it is quite difficult to distinguish whether speech "does no more than propose a commercial transaction," or expresses views on the issues of the day, or engages in artistic expression. *Id.* at 1231–34.[4]

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[4] It is also common practice for airlines to engage on the Twitter social media platform. Southwest Airlines, for example, uses its @SouthwestAir account to engage with customers, announce airline news, provide customer support, and generally promote itself. Aside from the occasional announcement of a fare sale, however, none of these communications neatly fit the definition for commercial speech.

In two recent First Amendment decisions, the Court declined to distinguish between commercial and noncommercial speech. In *Sorrell*, the Court struck down a Vermont statute that imposed a content- and viewpoint-based ban on commercial speech. 564 U.S. at 563–65, 580. The Court declined to determine which level of scrutiny was appropriate, because the Vermont statute could not withstand intermediate scrutiny. *Id.* at 571. However, the Court did reaffirm the significant value of commercial speech, and explained that its focus was the challenged law's content- and viewpoint-based application. *Id.* at 566–67. Furthermore, the Court limited the availability of intermediate scrutiny to circumstances where the government's interest is to prevent commercial harm and fraud. *Id.* at 579. To the extent that the commercial speech doctrine remains after *Sorrell*, it is significantly limited.

More recently, in *Reed*, this Court held that content- and viewpoint-based speech restrictions are subject to strict scrutiny. 135 S. Ct. at 2226–27. The Court did not limit the rule to noncommercial speech, and cited approvingly to commercial speech decisions to set out the rule. *See id.* at 2226–28 (citing *Sorrell* and *Cincinnati*, 507 U.S. 410). Indeed, the Court cited *Sorrell* as authority for the proposition that before considering the purpose or justification for a speech restriction, the Court must first consider whether the law regulates based on content. *Id.* at 2228. There is no obvious reason to limit that proposition to noncommercial speech. In fact, were a court to consider whether a speech restriction applies to commercial or noncommercial speech first, it would violate *Reed*. *Id.* at 2227 (emphasizing that laws that

cannot be "justified without reference to the content of the regulated speech" are subject to strict scrutiny).

While *Reed* does not expressly hold that it applies to commercial speech, it set out broadly applicable rules for content-based speech restrictions, and did not seek to limit *Sorrell* or its application to commercial speech. Some lower courts have begun applying *Reed* to content-based commercial speech restrictions. *See Thomas v. Schroer*, 127 F. Supp. 3d 864, 873–75 (W.D. Tenn. 2015) (applying strict scrutiny under *Reed* after determining Tennessee's Billboard Act was content-based); *but see Citizens for Free Speech, LLC v. Cty. of Alameda*, 114 F. Supp. 3d 952, 968–69 (N.D. Cal. 2015) (holding *Reed* does not apply to commercial speech). This Court should quell any remaining confusion by expressly overruling *Central Hudson*.

B. Principles of *Stare Decisis* Do Not Support Preserving *Central Hudson*

Respect for precedent and *stare decisis* are insufficient reasons to maintain *Central Hudson*. While *stare decisis* is "of fundamental importance to the rule of law," *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989), "when governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.' " *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (quoting *Smith v. Allwright*, 321 U.S. 649, 665 (1944)). It is appropriate to overrule previous decisions when they are detrimental to "coherence and consistency in the law . . . because of inherent confusion created by an unworkable decision." *Patterson*, 491 U.S. at 173. Once a previous decision has shown to be unworkable,

"the mischievous consequences to litigants and courts alike from the perpetuation of an unworkable rule are too great" to justify upholding the decision. *Swift & Co., Inc. v. Wickham*, 382 U.S. 111, 116 (1965); *see also Montejo v. Louisiana*, 556 U.S. 778, 792 (2009) ("[T]he fact that a decision has proved 'unworkable' is a traditional ground for overruling it.").

Whether it is the confusing and inconsistent application of the four-part test for commercial speech, or the increasing difficulty in distinguishing between commercial and noncommercial speech, many have noted that *Central Hudson* is unworkable. *See, e.g.*, *44 Liquormart*, 517 U.S. at 526–27 (Thomas, J., concurring); *Kasky*, 45 P.3d at 269 (Brown, J., dissenting). Furthermore, the reasoning behind *Central Hudson*'s diminished protection of commercial speech has never been satisfactorily established. *44 Liquormart*, 517 U.S. at 526 (Thomas, J., concurring); *Tam*, 137 S. Ct. at 1769 (Thomas, J., concurring). When a precedent's "logic threatens to undermine our First Amendment jurisprudence and the nature of public discourse more broadly—the costs of giving it *stare decisis* effect are unusually high." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 382 (2010). Therefore, considerations of *stare decisis* should not compel the Court to maintain a distinction between commercial and noncommercial speech founded on such questionable footing.

A better approach, more consistent with this Court's First Amendment precedents—including *Reed*—would explain that there is no principled distinction between commercial and noncommercial speech under the First Amendment. As a result, the Court should overrule *Central Hudson* and eliminate

its unprincipled and limited protection of commercial speech. At a minimum, if *Central Hudson* remains good law, the Court should clarify that it only applies where the government's interest is to prevent actual commercial harm or fraud. In either event, *Central Hudson* has no applicability here, where the government's interest has nothing to do with preventing commercial harm or fraud and, accordingly, strict scrutiny must apply.

CONCLUSION

For the foregoing reasons, the decision of the Federal Circuit should be affirmed. Strict scrutiny is the appropriate standard to review the scandalous-marks provision. If this Court holds Mr. Brunetti's mark to be commercial speech, *Central Hudson* should be repudiated.

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Respectfully submitted,

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